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Gilbert Cabillic

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TEXAS INSTRUMENTS INCORPORATED  
P O BOX 655474, M/S 3999  
DALLAS, TX 75265

EXAMINER

VO, TED T

ART UNIT

PAPER NUMBER

2191

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/003,570	<b>Applicant(s)</b> CABILLIC ET AL.	
	<b>Examiner</b> TED T. VO	<b>Art Unit</b> 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06/20/2006 inview of Brief on 02/26/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to Applicants' amendment filed on 06/20/2006.

It should be noted that Applicants amended the claims that filed on or after appeal; the claims have not been entered yet. In replying to the office action, it requires amending the claims on the version that filed on 06/20/2006.

Claims 1-15, 18-24 are pending in this application.

### ***Specification***

2. The specification refers the sites that contain hyperlinks. If the specification has browser executable code such as hyperlink, it requires deleting hyperlinks. Accordingly, this specification is objected to.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-8, 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claims 1-8: In this scope of the claims, claims 1, 3 recites, "said desired program code characteristics" (@line4 of claim 1 and @line3 of claim 3). The recitation "said desired" lacks antecedent basis in the claims; thus it renders the claims indefinite. As noted that an amendment which is filed on or after appear where the amendment is not for canceling a claim will not be entered. Since this office action is non-final, it requires an entered amendment to remove the word "desired". As Applicants attempted removing it on their appeal, the amendment to remove the term is appreciated. The rejection is applied because the examination takes the version that filed on 06/20/2006.

As per claims 22-23: The claim recites a processor. Physically, the processor is an apparatus which requires consisting of elements. None of the elements of a processor is shown. It has seen in the claim that its recitation attempts using a method for configuring the processor; its functionality is a process for use. Therefore, it is unclear whether the language of claim 22 and 23 is directed to a processor or a method of using that processor. A reviewing court has determined that a claim directed to a system and a method for using that system is indefinite. *See IPXL Holdings*, 430 F.3d at 1384. *See also \$3 Inc.*, 259 F.3d at 1372 ("When the claims become so ambiguous that one of ordinary skill in the art cannot determine their scope absent speculation, such claims are invalid for indefiniteness.") (citing *In re Steele*, 305 F.2d at 862-63). The interpretation for the claims is they are processor apparatuses.

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As per claim 24: The claim recites a system comprising two processors. It shows that the claim merely recite a method for use, configured by upon two program source code modules. The claim is without any elements for structuring a system and/or the two of the processors. Therefore, it is unclear whether the language of claim 24 is directed to a system of two processors or a method for use. A reviewing court has determined that a claim directed to a system and a method for using that system is indefinite. *See IPXL Holdings*, 430 F.3d at 1384. *See also \$3 Inc.*, 259 F.3d at 1372 ("When the claims become so ambiguous that one of ordinary skill in the art cannot determine their scope absent speculation, such claims are invalid for indefiniteness.") (citing *In re Steele*, 305 F.2d at 862-63). The interpretation for the claim is it is a system of two processors.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. The claims 1-8, 9-10, 11-12, 13-15 and 18-21 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

In light of recent court decision on *Bilski* issued to 35 USC 101, the method claim which meets the statutory claim must transform a particular article to the different state or thing, or being tied to at least a statutory class.

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As per claims 1-8:

Analysis: Claims 1-8 direct to a method. The scope of the claims recites: “generating program source code for translating high level code into instructions for a target processors”. Even the method mentions “target processors”, the scope merely covers handwriting. For example: C program source (“high level code”) that can be assembly into an Intel assembly language (“target processor”). There is no step in the claim showing the process must be done by a real physical processor for the generation. Moreover, the appearance of “target processor” is only an intended purpose that will be a target for generating the program source code.

Furthermore, in the body of the method,

*“determining a program code characteristic corresponding to said target processor;*

*deriving one or more program code modules in accordance with said desired program code characteristic; and*

*generating program source code for translating high level code into instructions for said target processor from said one or more program code modules”,*

it appears that with handwriting can form the method, i.e. the method fails to meet the two requirements on Bilski for being statutory process claim.

As per claims 9-10: The rejection is applied the same as being analyzed as in the rejection of claims 1-8.

As per claims 11-12:

Analysis: Claims recite “data processing apparatus”. As it is known that an apparatus can be a program module. The claims fail to connect to a machine but the claims are only indented for creating program source code. Its apparatus covers a programming per se.

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As per claims 13-15, 18-21: The rejection is applied the same as being analyzed as in the rejection of claims 11-12.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-15, 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al., “Distributed Programming with Intermediate IDL”, June 1999, Ada Letters, Col. XIX, No. 2, pages 90-95.

As per Claim 1: Smith discloses, *A method for generating program source code for*

*translating high level code into instructions for a target processors, the method comprising: determining a program code characteristic corresponding to said target processor;*

(see Figure 4, JIA; see sec. 3.1, particularly, see sec. 3.1.2, and 3.1.3, the modules are the sources of Ada code and Java code))

*deriving one or more program code modules in accordance with said desired program code characteristic; and*

(see abstract (p. 90), see sec. 2, sec 3.2 )

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***generating program source code for translating high level code into instructions for said target processor from said one or more program code modules.***

(See Figure 3: IDL Object specifications; see sec. 3, particularly the paragraph in p. 92; see sec. 3.1, particularly, for “modules”, see sec, 3.1.2, and 3.1.3)

As per Claim 2: Smith discloses,

***A method according to claim 1, for generating program source code for translating high level code (Figure 4-5) into instructions for one of a plurality of target processors.***

(see sec. 3, particularly the paragraph in p. 92; see sec. 3.1, particularly, for “modules”, see sec, 3.1.2, and 3.1.3)

As per Claim 3: Smith discloses,

***A method according to claim 1, comprising forming agglomerated program source code from a plurality of program code modules (See Figures 1,3) in accordance with said desired program code characteristic.***

See Figure 4-5, and see sec. 3.1.1.

As per Claim 4: Smith discloses,

***A method according to claim 1, further comprising deriving said program code modules in accordance with a desired functionality for said target processor. See abstract (p. 90: using the IDL, see sec. 2, sec 3.2.***

As per Claim 5: Smith discloses,

***A method according to claim 2, wherein:***

***said step of determining comprises determining respective program code characteristics for respective ones of a plurality of target processors;***

***said step of deriving comprises deriving respective program code modules in accordance with said respective program code characteristics; and***

***said step of generating comprises generating program source code for translating high level code into instructions for said target processors from said program code modules.***

See rationale addressed in the rejection of claim 1.

As per Claim 6: Smith discloses,

***A method according to claim 1, wherein said step of deriving comprises selecting one or more pre-defined program code modules in accordance with said program code characteristic from a plurality of available program code modules.***



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See Figure 4-5, and refer to the use of IDL.

As per Claim 7: Smith discloses,

***A method according to claim 1, wherein said program code provides a virtual machine for said target processor.*** See sec. 2.2 (p. 91).

As per Claim 8: Smith discloses,

***A method according to claim 1, wherein said program code comprises elements of a programming language.*** See Figure 1 or 3.

As per Claims 9, 11: Regarding the limitation recited in claims 9, 11, the functionality of the claims has the same to the functionality recited in Claim 1. See the rationale addressed in the rejection of claim 1 for the rejection to claims 9 and 11.

As per Claims 10, 12: Regarding the limitation recited in claims 10, 12, the functionality of the claims has the same to the functionality recited in Claim 2. See the rationale addressed in the rejection of claim 2 for the rejection to claims 10 and 12.

As per Claim 13: Regarding: *An apparatus, comprising at least one program source code module of a plurality of program source code modules for translating between high level code and instructions for a target processor, said at least one program code module corresponding to a characteristic of said target processor and being selected from said plurality of program source code modules.*

See the rationale addressed in Claim 1.

As per Claim 14: Regarding: *The apparatus of claim 13, further comprising at least one additional program code modules for translating between high level code and instructions for respective ones of at least two target processors.*

See the rationale addressed in Claim 2.

As per Claim 15: Regarding: *The apparatus according to claim 14, wherein said at least two program code modules are selected from a plurality of predefined program code modules.*

See the rationale addressed in Claim 3.

As per Claim 18: Regarding: *The apparatus according to claim 13, wherein said program source code provides a virtual machine for said target processor or processors.*

See p. 91, refer to JVM.

As per Claim 19: Regarding: *The apparatus according to claim 14, wherein said program source code provides a virtual machine for said target processor or processors.*

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See p. 91, refer to JVM.

As per Claim 20: Regarding: *The apparatus according to claim 13, wherein said program source code comprises elements of a programming language.*

~~(Program code according to claim 13, said program code comprising JAVA program elements).~~

See Figure 1, or 3, refer to JAVA source code.

As per Claim 21: Regarding: *The apparatus according to claim 14, wherein said program source code comprises elements of a programming language.*

~~Program code according to claim 14, said program code comprising JAVA program elements.~~

See Figure 1, or 3, refer to JAVA source code.

As per Claim 22: Regarding: *A processor, configured in accordance with program code comprising at least one program code module of a plurality of program source code modules, for translating between high level code and instructions for a target processor, said at least one program source code module being in accordance with a characteristic of said target processor and selected from said plurality of program source code modules.*

See a computer that installed with a JVM, sec. 2.2, p. 91

As per Claim 23: Regarding: *A processor, configured by program code comprising an agglomeration of two or more program source code modules of said plurality of said program source code modules.*

See a computer that installed with a JVM, sec. 2.2, p. 91

As per Claim 24: Regarding: *A system comprising a first and second processor, said first and second processor configured in accordance with program code comprising at least two program source code modules, wherein the first of said at least two program*

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*source code modules is arranged to translate high level code to instructions for said first processor and a second of said at least two program source code modules is arranged to translate high level code to instructions for said second processor.*

See client/server computers that run with a JVM, sec. 2.2, p. 91

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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TTV

May 05, 2009

/Ted T. Vo/

Primary Examiner, Art Unit 2191